

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

STATE OF NEW MEXICO *ex rel.*

State Engineer,

Plaintiff,

v.

No. Civ. 66-6639 MV/WPL

R. LEE AAMODT *et al.*,

Defendants,

and

UNITED STATES OF AMERICA,

PUEBLO DE NAMBÉ,

PUEBLO DE POJOAQUE,

PUEBLO DE SAN ILDEFONSO,

and PUEBLO DE TESUQUE,

Plaintiffs-in-Intervention.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on Plaintiff State of New Mexico's Motion for Default Judgment (Doc. No. 7353, filed March 30, 2011). For the reasons stated below, the Court will **DENY** the Motion **without prejudice**.

Plaintiff State of New Mexico ("the State") seeks orders granting default judgment against eight defendants on the grounds that they "are in default for failure to appear, answer, or otherwise defend in this cause, as shown by the Clerk's Certificate of Default." (Motion at 1-2). It appears that the Servicemembers Civil Relief Act, formerly known as the Soldiers' and Sailors' Civil Relief Act of 1940, may be applicable to the State's Motion. *See* 50 App. § 521.

The Servicemembers Civil Relief Act protects servicemembers against default judgments. *See* 50 App. § 521. Section 521 of the Act "applies to any civil action . . . in which the defendant does not make an appearance." Before entering judgment for the plaintiff, the Court "shall require

the plaintiff to file with the court an affidavit" stating whether or not the defendant is in military service or that the plaintiff is unable to determine whether or not the defendant is in military service. 50 App. § 521(b)(1).

The State's three-sentence Motion does not contain an affidavit stating whether the defendants are servicemembers; nor does it assert or discuss why the Servicemembers Civil Relief Act is not applicable. The Court will deny the Motion without prejudice. The State may file a revised motion either with an affidavit as described in Section 521 of the Act or showing that the Act is not applicable to the motion. *See* 10 Moore's Federal Practice § 55.90 (3d ed.) (the affidavit must state specific facts proving that the defaulting party is or is not in service; if plaintiff is unable to determine whether defendant is in service, the affidavit must state the facts of the investigation). If the Act is applicable, the State's revised motion shall address any other relevant provisions of the Act such as the appointment of an attorney and the need for a bond. *See* 50 App. § 521(b-h).

IT IS SO ORDERED.

Dated this 10 day of July, 2011.



MARTHA VAZQUEZ

UNITED STATES DISTRICT JUDGE